No. 13768

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WASHINGTON-OREGON SHINGLE WEAVERS' DISTRICT COUNCIL AND EVERETT LOCAL 2580 SHINGLE WEAVERS' UNION, A. F. L., RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 151 *et seq.*), for enforcement of its order issued on December 19, 1952, against Washington-Oregon Shingle Weavers' District Council, hereinafter referred to as the District Council, and Everett Local 2580 Shingle Weavers' Union, hereinafter referred to as Local 2580, following the usual proceedings under Section 10 of the Act. The Board's decision and

order (R. 239–250, 203–216)[1] are reported in 101 N. L. R. B. No. 203. This Court has jurisdiction of the proceedings under Section 10 (e) of the Act, the unfair labor practices having occurred within this judicial circuit at Marysville, Washington.[2]

STATEMENT OF THE CASE

The unfair labor practices in this case pertain to the secondary boycott called by respondents against the Sound Shingle Company, herein called the Company. The subsidiary findings of fact, which are substantially undisputed, may be summarized as follows:

I. The Board's findings of fact

The Company commenced its operations at Marysville, Washington, in January 1951 (R. 205; 263–264). Shortly thereafter, Paul M. Sarrett, field representative of the District Council, called on John E. Martin, a company partner, and warned him that the District Council would not permit the Company to use Canadian shingles and that if it persisted in doing so the plant would have to close (R. 205; 264–265). The "Shingle Weaver," official publication of the District

[1] References to portions of the printed record are designated "R." References preceding a semicolon are to the Board's findings, and references following a semicolon are to the supporting evidence.

[2] The Sound Shingle Company, injured by the unfair labor practices here involved, is engaged at Marysville, Washington, in the business of manufacturing and processing shingles and shakes. During the year 1951, the Company shipped to points outside the State of Washington products valued in excess of $42,000. No question as to the Board's jurisdiction is presented (R. 204–205; 320).

Council, had a few months earlier announced a policy to eliminate all "unfair Canadian or other nonunion" shingles from the markets in the United States (R. 205–206; 12–17). On February 2, 1951, the Company entered into a contract with the District Council and Local 2580 (R. 206; 39–62).

Nearly a year later, on January 11, 1952, the Company received a carload of shingles from the North Shore Shingle Company, a Canadian organization, with which it had a contract to groove shakes (R. 206; 265–266). This car was opened by Jack Butters, company superintendent, assisted by John A. Martin, steward for Local 2580, and other employees (R. 206; 361–362). The men observed immediately that the shingles bore no union label (R. 206; 362). Thereupon, Martin remarked, "they are B. C. [British Columbia] shingles and we won't do nothing with them. We will let them sit there" (R. 206; 362–363). After Martin's remarks, all the employees left the plant and operations had not been resumed at the time of the hearing (R. 206; 382).

On January 13, two days after the plant closed down, John E. Martin, company partner, met with Sarrett, District Council field representative. Martin asked Sarrett why the Company could not use Canadian shingles (R. 206; 270–272, 335, 378–379). Sarrett replied that Fred Baker, a member of the District Council from Oregon, was more familiar with the problem in question (R. 206; 272, 335–336, 379). Baker then came in, and when he was asked to give an explanation he stated that Canadian shingles were

unfair because Canadian employees did not have the same wages, hours, and working conditions as employees in the United States (R. 206–207; 273–274, 336). Baker went on to say that until such time as the Canadian employees enjoyed the same working conditions as their fellow employees in the United States the District Council would oppose the use of Canadian shingles anywhere in the United States (R. 206–207; 273–274, 336). Martin then explained that the shingles which the employees had refused to process were manufactured by the North Shore Shingle Company, which had a contract with a CIO union (R. 207; 274–275, 337). Sarrett responded that it made no difference as the District Council did not recognize the CIO union in Canada (R. 207; 274–275, 337). Sarrett continued that the Canadian employers did not have a contract with the District Council, and that the working conditions of their employees were unlike those found in the United States (R. 207; 276, 337). Sarrett then stated: "We have been working on them for quite some time to get their standard up to ours, and until such time as we can get the mills to sign a contract with us and agree to the same wages, hours, and working conditions, we absolutely won't allow you to run them" (R. 207; 276).

On the following day, January 14, Martin conferred with Arthur Brown, president of the District Council, Glenn Uttley, president of Local 2580, and John A. Martin, steward of the Local (R. 207; 277–278, 339). When Martin indicated that he wanted to resume operations at the plant, Brown replied that the only

way he could accomplish that would be for him to process his own shingles or to buy those made in the United States (R. 207–208; 279–280, 340). Brown asserted that he would never allow Martin to process Canadian shingles, and that if Martin intended to use Canadian shingles he better move his plant as he would never be permitted to work on them there (R. 208; 279–280, 340–341). Brown referred to the efforts he had made to organize the Canadian plants in order to secure for the Canadian employees the same working conditions as those found in the United States (R. 208; 281). He indicated that one Canadian employer was agreeable to the idea as he was anxious to find a market in California for his products (R. 208; 281).

At this juncture, Martin, the company partner, asked Brown if he was calling the employees off the job (R. 208; 282–283, 341–342). Brown replied that he was not, but that the employees refused to work on Canadian shingles (R. 208; 282–283, 341–342). Martin then asked Steward Martin if Brown's statement was accurate (R. 208; 282–283, 341–342). Steward Martin thereupon turned to Brown and stated: "The reason that we refuse to work on Canadian shingles is because you ordered us not" (R. 208; 282, 341–342). Brown then remarked: "Well, O. K. For the record, let us have it that way. We absolutely won't allow your boys here to work on Canadian shingles" (R. 208; 282, 341–342). Brown, in an article appearing in the January 1952 edition of the "Shingle Weaver," asserted again the District Coun-

cil's determination to secure favorable working conditions in Canada before permitting the Canadian products to be processed in the United States (R. 208; 17–18).

A few weeks after the plant closed, employees Rosenbach and Bockwinkel questioned Brown about returning to their positions (R. 208–209; 370–371, 375). Brown replied that if they did return they would be placed on the black list as the Company was using unfair shingles (R. 209; 370–371, 375).

II. The Board's conclusions of law

On the basis of the foregoing facts the Board concluded that, in violation of Section 8 (b) (4) (A) of the Act, the District Council and Local 2580 induced and encouraged the Company's employees to refuse to work on Canadian shingles, an object thereof being to cause the Company to cease using or otherwise dealing in the products of North Shore Shingle Company, Ltd., and other Canadian manufacturers.

III. The Board's order

The Board's order (R. 248–249) requires the District Council and Local 2580 to cease and desist from engaging in or inducing or encouraging their members to engage in a strike or a concerted refusal to perform services for the Company or any other employer where an object thereof is to require the employer to cease doing business with the North Shore Shingle Company or other Canadian shingle manufacturers. Affirmatively, the Board's order directs both the Dis-

trict Council and Local 2580 to give notice to members of Local 2580 that they are free to work for the Company and that such employment will not prejudice their rights in either organization, and to notify the Company that its employees will not be induced or encouraged to engage in a strike or a concerted refusal to work upon products of the North Shore Shingle Company or other Canadian shingle manufacturers for the purpose of requiring the Company to cease doing business with any Canadian shingle manufacturer. The Board's order also requires the posting of appropriate notices (R. 249–250).

SUMMARY OF ARGUMENT

Substantial evidence on the whole record supports the Board's findings, first, that respondents induced the Company's employees to refuse to work on Canadian shingles, and second, that an object of this refusal was to require the Company to cease dealing in the products of North Shore Shingle Company and to that extent to cease doing business with it. The means thus employed and the end sought were precisely those prohibited by Section 8 (b) (4) (A) of the Act. It constituted subjecting the Company to a cessation of work, not because of dissatisfaction by its employees with their own working conditions, but because of dissatisfaction with the working conditions of the employees of another employer with whom the Company had no connection other than as purchaser of its product. Section 8 (b) (4) (A) was aimed at eliminating this sort of "product boycott."

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ARGUMENT

The Board properly found that the District Council and Local 2580, by inducing and encouraging the Company's employees to refuse to work on Canadian shingles, with an object of requiring the Company to cease dealing in shingles of Canadian manufacturers, engaged in an unfair labor practice prohibited by Section 8 (b) (4) (A) of the Act

Section 8 (b) (4) (A) of the Act, in relevant part, provides that:

> (b) it shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * *
>
> (4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to * * * work on any goods * * * where an object thereof is: (A) forcing or requiring * * * any employer or other person to cease using * * * or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; * * *

It is apparent that conduct is proscribed by Section 8 (b) (4) (A) when it meets two conditions. First, the Union must engage, or induce employees to engage, in a strike or a concerted refusal to work in the course of their employment. Second, an object of this conduct must be to require any person to cease dealing in the product of any other person or otherwise doing business with him. In this case, respondent's conduct fell within the ban of the requirements of Section 8 (b) (4) (A), because the means employed met the first condition and the end sought met the second.

Thus—as to the means employed to induce the refusal to work—upon the arrival of a carload of shingles of Canadian manufacture, the Shop Steward for Local 2580 precipitated the cessation of work by remarking, "They are B. C. [British Columbia] shingles and we won't do nothing with them. We will let them sit there" (*supra,* p. 3). The union-induced character of the refusal to work was later confirmed when the steward stated to the president of the District Council, "The reason that we refuse to work on Canadian shingles is because you ordered us not," and the president concurred, "Well, O. K. For the record, let us have it that way. We absolutely won't allow your boys to work on Canadian shingles" (*supra,* p. 5). Thereafter, the president threatened two employees with blacklisting should they return to work for the Company so long as it was using Canadian shingles (*supra,* p. 6). Accordingly, there can be no question concerning the substantiality of the evidence to support the Board's finding that the cessation of work was induced by respondents.

The second branch of the offense—the object sought by the refusal to work—was established by equally ample evidence. The policy adopted by respondents was to eliminate Canadian shingles from markets in the United States because the conditions of their manufacture were considered inferior to those prevailing in the United States (*supra,* p. 4). Labor conditions were deemed unsatisfactory even if the Canadian employer was under contract with a CIO union (*supra,* p. 4); only a labor agreement with the

District Council was considered to be adequate assurance of satisfactory working conditions (*supra,* p. 4). Accordingly, Canadian shingles would be classed unfair by respondents, and their use would be interdicted, until the Canadian manufacturer agreed to "sign a contract with us" (*supra,* p. 4). In implementation of this policy, when the Company received a carload of shingles from North Shore Shingle Company, a Canadian employer said to be under contract with a CIO union, respondents refused to countenance the Company's use of them and induced the Company's employees not to work on them (*supra,* p. 3). The Board therefore properly concluded that the cessation of work induced by respondents had as its forbidden objective to require the Company "to cease using the products" of North Shore and, "to that extent, to cease doing business with it" (R. 243).[3]

It is therefore clear that respondents violated Section 8 (b) (4) (A), for the means they employed and

[3] Respondents' illegal objective was proved in part by articles appearing in their official organ, the "Shingle Weaver," publicizing respondents' policy (*supra*, pp. 2–3, 5–6). Respondents contend that reception of this evidence contravened Section 8 (c) of the Act, which states that "expressing of any views, argument, or opinion * * * shall not constitute or be evidence of any unfair labor practice * * * if such expression contains no threat of reprisal or force or promise of benefit." Pronouncements constituting an integral part of an illegal course of conduct are not safeguarded by Section 8 (c). As explained in *I. B. E. W.* v. *N. L. R. B.*, 341 U. S. 694, 704–705, "The remedial function of § 8 (c) is to protect noncoercive speech by employer and labor organization alike in furtherance of a lawful object. It serves that purpose adequately without extending its protection to speech or picketing in furtherance of unfair labor practices such as are defined in § 8 (b) (4). The general terms of § 8 (c) appropriately

the end they sought were precisely those contemplated by that section. It constituted the exertion of pressure on the Company, through inducing its employees to withhold their labor, merely because the working conditions of the employees of another employer were considered unsatisfactory. It is this involvement of a neutral employer in a controversy not his own which Section 8 (b) (4) (A) condemns. *N. L. R. B.* v. *Denver Building & Construction Trades Council,* 341 U. S. 675; *I. B. E. W.* v. *N. L. R. B.,* 341 U. S. 694; *Local 74* v. *N. L. R. B.,* 341 U. S. 707; *N. L. R. B.* v. *United Brotherhood of Carpenters & Joiners,* 184 F. 2d 60 (C. A. 10), certiorari denied, 341 U. S. 947; *N. L. R. B.* v. *Denver Building & Construction Council,* 193 F. 2d 421 (C. A. 10); *N. L. R. B.* v. *Wine, Liquor & Distillery Workers Union,* 178 F. 2d 584 (C. A. 2).

Respondents claim, however, that they did not involve the Company in a quarrel not its own. As phrased by respondents, "Their quarrel * * * was immediately and directly with their employer [the Company], and with no one else whatsoever," and the pressure exerted on the Company was in de-

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give way to the specific provisions of § 8 (b) (4)." In any event, even if the articles were erroneously received, the remaining evidence is ample to support the Board's findings.

To the extent that respondents claim that their inducement of the Company's employees not to work was accomplished by the uncoercive expression of views, and therefore safeguarded by Section 8 (c), *I. B. E. W.* v. *N. L. R. B.*, 341 U. S. 694, 700–705, likewise settles this contention contrary to respondents' position. In any event, the inducement directed to the Company's employees took the form of instructions and threats rather than persuasion (*supra*, p. 9).

fense of "their basic fundamental right to decline to work upon nonunion, nonlabel or unfair products."[4] The short answer to respondents' contention is that Section 8 (b) (4) (A) undercuts the assumptions on which they are proceeding. An employer may no longer be subjected to a cessation of work by a union merely because the employer uses a product deemed objectionable by virtue of the working conditions which prevail at the original place of the product's manufacture. *Wadsworth Building Co.,* 81 N. L. R. B. 802, 805–806, enforced, 184 F. 2d 60 (C. A. 10), certiorari denied, 341 U. S. 947; *N. L. R. B.* v. *Denver Building & Construction Trades Council,* 193 F. 2d 421 (C. A. 10). An employer may not be made a party to a dispute merely because he buys from, is the subcontractor of, or otherwise does business with another employer whose working conditions a union finds unsatisfactory. *N. L. R. B.* v. *Wine, Liquor & Distillery Workers Union,* 178 F. 2d 584, 587 (C. A. 2); *N. L. R. B.* v. *Denver Building & Construction Trades Council,* 341 U. S. 675, 689–690.

Thus, the Senate Report, after setting forth the general objective of Section 8 (b) (4) (A) to forbid secondary boycotts, exemplified the forbidden practice by a concrete illustration (S. Rep. No. 105, 80th Cong., 1st sess., 22, in 1 Leg. Hist. 428):[5]

> [It is] an unfair labor practice for a union to engage in the type of secondary boycott that

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[4] Respondents' brief to the Board, pp. 10–11.

[5] "Leg. Hist." refers to the two volume edition of "Legislative History of the Labor Management Relations Act, 1947," Govt. Print. Off. (1948).

> has been conducted in New York City by local No. 3 of the IBEW, whereby electricians have refused to install electrical products of manufacturers employing electricians who are members of some labor organization other than local No. 3. (See testimony of R. S. Edwards vol. 1, p. 176 *et seq.*;[6] *Allen Bradley Co.* v. *Local Union No. 3, I. B. E. W.*, 325 U. S. 797.)

This union attitude, which forbade the use of material at the point of installation because of the character of its manufacture elsewhere, was summarized by Senator Taft to be: "We will not permit any material made by any other union or by any nonunion workers to come into New York City and be put into any building in New York City." (93 Cong. Rec. 4199, in 2 Leg. Hist. 1107.) The identification of the buyer of a product with the objectionable character of its manufacture elsewhere—the evil apprehended by Congress—was further illustrated by Senator Taft (93 Cong. Rec. 4199, in 2 Leg. Hist. 1107–08; see also 93 Cong. Rec. 3838, in 2 Leg. Hist. 1012):

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[6] " * * * The boycott we are objecting to operates like this: The A. F. of L. International Brotherhood of Electrical Workers controls the labor that installs electrical construction materials of all kinds. This IBEW refuses to install and brings pressure on contractors and wholesalers to prevent them from handling any of these electrical construction materials unless they have been manufactured by IBEW labor *in the original plants.*" [Emphasis supplied.] 1 *Hearings before the Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22*, 80th Cong., 1st Sess., 176–177. As explained by the Second Circuit during its consideration of the case, the labor weapon involved was "refusal to work upon disfavored goods." *Allen Bradley Co.* v. *Local Union No. 3*, 145 F. 2d 215, 219 (C. A. 2), reversed, 325 U. S. 797.

> All over the United States, teamsters are saying, "We will not handle this lumber, because it is made in a plant where a CIO union is certified." * * *
> Likewise, * * * all over the United States, carpenters are refusing to handle lumber which is finished in a mill in which CIO workers are employed, or, in other cases, in which American Federation of Labor workers are employed.

Senator Taft concluded by condemning the view "that if other workers do not like the way some employer is treating his employees, they can promote strikes in any other plant which happens to be handling the products of the plant whose management the workers do not like." (93 Cong. Rec. 4199, in 2 Leg. Hist. 1108.)

Senator Taft had prefaced these illustrations and his conclusion with the following remarks explaining the purpose of Congress to insulate the buyer of a product from conscription into quarrels concerning its manufacture (93 Cong. Rec. 4198, in 2 Leg. Hist. 1107):

> Take a case in which the employer is getting along perfectly with his employees. They agree on wages. Wages and working conditions are satisfactory to both sides. Someone else says to those employees, "We want you to strike against your employer because he happens to be handling some product which we do not like. We do not think it is made under proper conditions." Of course if that sort of thing is encouraged there will be hundreds and thousands of strikes in the United States. There is no reason that I can see why we should

> make it lawful for persons to incite workers to strike when they are perfectly satisfied with their conditions. If their conditions are not satisfactory, then it is perfectly lawful to encourage them to strike. The Senator [Pepper] says they must be encouraged to strike because their employer happens to be doing business with someone the union does not like or with whom it is having trouble or having a strike. On that basis there can be a chain reaction that will tie up the entire United States in a series of sympathetic strikes, if we choose to call them that.

In this case, therefore, it is abundantly clear that the Union could not lawfully subject the Company to a cessation of work merely because the Company bought Canadian shingles to which the Union objected on the ground that they were manufactured under employment conditions assertedly inferior to those existing in the United States. It makes no difference whether or not the Union's conduct be thought to have a worthwhile objective. As Senator Taft explained, Section 8 (b) (4) (A) draws no distinction between "good secondary boycotts and bad secondary boycotts"; it condemns all. 93 Cong. Rec. 4198, in 2 Leg. Hist. 1106; *N. L. R. B.* v. *Wine, Liquor & Distillery Workers Union,* 178 F. 2d 584, 586–587 (C. A. 2). As he further explained, "I do not see how we can distinguish between a plant employing union labor and a plant employing nonunion labor, or between a plant paying good wages and a plant paying poor wages, or between a plant employing CIO labor and a plant employing AFL labor." 93 Cong. Rec.

4199, in 2 Leg. Hist. 1108. Accordingly, the conditions of employment which actually prevailed in the plants of Canadian manufacturers producing shingles are immaterial.

Respondents contend, further, that it was not shown that they had a current, concrete controversy with North Shore Shingle Company, the Canadian employer whose shingles the Union forbade the Company to use; therefore, it is argued, it has not been established that the cessation of work by the Company's employees was in furtherance of a dispute between the Union and North Shore. The Board correctly concluded that (R. 244): "We do not believe that, as to the type of conduct now before us, Section 8 (b) (4) (A) contemplates the existence of an active dispute, over specific demands, between the union and the producer of goods under union interdict." North Shore was within the class of the Canadian employers producing shingles against whom respondents' policy was directed. The implementation of the policy may not yet have reached the stage of a direct demand upon North Shore. But the gist of the offense is to subject an employer to a cessation of work merely because he buys the product of a disfavored producer. The hurt to the buyer is the same—he is as much embroiled in a dispute not his own—whatever the stage, scope, or degree of controversy between the union and the disfavored producer. Accordingly, from the viewpoint of the interest Section 8 (b) (4) (A) is designed to protect, the critical inquiry is whether the cessation of work caused by the union stems from the employees' dissatisfaction with

their own working conditions or whether it has a basis in dissatisfaction with the working condition of the employees producing a product with which their employer has no connection other than as a purchaser. Considered in this light, it is clear that respondents' conduct in this case violated Section 8 (b) (4) (A) of the Act.

Several subsidiary contentions may be briefly noted:

1. It is urged that because North Shore Shingle Company is a Canadian corporation, it is not "any other producer, processor, or manufacturer" or "any other person" whom the Union may not force the Company, a domestic enterprise, to cease doing business with within the meaning of Section 8 (b) (4) (A). As the Board held, however, while it "does not have jurisdiction over foreign manufacturers as such, it does have jurisdiction over unfair labor practices occurring in this country and affecting foreign commerce" (R. 243). Neither by the text of Section 8 (b) (4) (A), nor by related definition (Section 2 (1)), do the words "any other producer, processor, or manufacturer" or "any other person" have a limitation based on national origin. Furthermore, the channels of commerce which union unfair labor practices have "the intent or necessary effect of burdening or obstructing" (Sec. 1, par. 4), and which the Act is designed to keep open, include "trade * * * between any foreign country and any State" (Sec. 2 (6)). Finally, it is the domestic employer who is safeguarded from the secondary boycott and his interest in not being involved in a quarrel not his own is the

same whether the disfavored goods are purchased from an American or a Canadian producer. In short, so long as the secondary boycott occurs in this country, it is immaterial that the reason for it arises elsewhere. *Norris Grain Co.* v. *Nordaas,* 232 Minn. 91, 46 N. W. 2d 94, 102–104.

2. Respondents claim that the cessation of work was not caused by the Company's purchase of Canadian shingles but by the Company's intention to place respondents' union label on the finished product contrary to respondents' policy of not affixing their label to any finished product made up in part of goods considered unfair by them. Without doubt respondents are entitled to protest any unauthorized use of their union label. The trouble with respondents' contention is that there is no evidence or offer of proof sufficient even to suggest that apprehended misuse of their union label was in any part the reason for the cessation of work they induced.[7] Moreover, even if it were established that this did contribute to the cessation of work, it is at the least clear that a substantial object of the cessation was to induce the Company not to deal in Canadian shingles. This being so, Section 8 (b) (4) (A) has been violated, for it is enough that this was "an object" of the cessation; it "is not necessary that [it be] the *sole* object. * * *" *N. L. R. B.* v. *Denver Building & Construction Trade Council,* 341 U. S. 675, 689.

[7] Thus, on February 10, 1951, almost a year before the cessation of work, the Company and respondents agreed that the union label should remain respondents' property with the right to recall it at any time, a right which they never chose to exercise (R. 212; 198).

3. Respondents rely upon *Rabouin* v. *N. L. R. B.*, 195 F. 2d 906 (C. A. 2), affirming 87 N. L. R. B. 972. This decision correctly holds that Section 8 (b) (4) (A) reaches only secondary boycotts and does not abridge a union's right to engage in a primary strike. 195 F. 2d at 912. But nothing in this distinction, nor in its appropriate application to the circumstances of that case,[8] remotely suggests that respondent's conduct in this case is within the class of primary labor action.

The only other part of *Rabouin* which is possibly relevant is its holding (195 F. 2d at 912), affirming the position of the Board (87 N. L. R. B. at 981–983), that a cessation of work by employees, acquiesced in by their employer, resulting from their employer's previous and unrepudiated agreement not to require his employees to work on "unfair" goods, is not a strike or a refusal to work engaged in or induced by the union as prohibited by Section 8 (b) (4) (A). The short of such a situation is that a cessation of work to which the employer consents can hardly be called a strike against him. This holding has no application to this case because there was here

[8] In that case, Rabouin, in an effort to evade his agreement to hire only union drivers, leased some of his trucks to another company, Atlantic, under an arrangement whereby Rabouin assigned the drivers to these trucks. Rabouin thereupon hired non-union drivers for the Atlantic runs, and the union called Rabouin's employees out on strike to compel him to employ union drivers. The Court held, in agreement with the Board, that the object of the strike was to require Rabouin to adhere to his agreement to employ union men; the object was not to cause Rabouin to cease doing business with Atlantic and it was not enough that such discontinuance might be a "by-product" of the primary strike against Rabouin.

no agreement by the Company with respondents consenting to the employees' refusal to work on disfavored goods. The only part of their agreement possibly touching on this question is Article VI (c) providing that (R. 47):

> All shingles and byproducts produced fair shall not be declared unfair providing the plant does not attempt to operate unfair with fair stock on hand.

On its face this provision is utterly ambiguous.[9] No extrinsic evidence was introduced clarifying its meaning. The provision may only be a restriction on the Union in declaring the Company's own products "unfair"; it may not refer at all to the Company's purchase of "unfair" products from others. Even if it applies to purchases by the Company, it would still require very generous inference to spell out from this provision an advance commitment by the Company not to require its employees to work on purchases designated "unfair" by the Union. Since the consequence of such a construction is to deprive the Company of its statutory protection against secondary boycotts, it is not permissible to imply such a relinquishment "in the absence of a clear and unmistakable showing of a waiver of such rights." Cf., *Tide Water Associated Oil Co.*, 85 N. L. R. B. 1096, 1098; *Iron Fireman Mfg. Co.*, 69 N. L. R. B. 19, 20; *N. L. R. B.* v. *Don Juan, Inc.*, 178 F. 2d 625, 627 (C. A. 2).[10]

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[9] Contrast the unambiguous agreements in *Rabouin*, 87 N. L. R. B. at 981, n. 28.

[10] Respondents also rely upon *Douds* v. *Sheet Metal Workers*, 101 F. Supp. 273 (original opinion), 970 (on rehearing) (E. D. N. Y.), a preliminary injunction proceeding instituted by the

CONCLUSION

For the reasons stated it is respectfully submitted that a decree should issue enforcing the Board's order in full.[11]

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AUGUST 1953.

General Counsel of the Board to restrain an alleged violation of Section 8 (b) (4) (A). To whatever extent this decision, as limited on rehearing, may go beyond the decision in *Rabouin*, we submit that it is erroneous. For the history of this case before the Board, see *Sheet Metal Workers International Association*, 102 N. L. R. B. No. 166, 31 L. R. R. M. 1479.

[11] Before the Board, respondents moved to dismiss the complaint as moot, giving as their reason that the specific controversy concerning the shipment of shingles from the North Shore Shingle Company had terminated. It is settled that an unfair labor practice proceeding is not mooted by either the termination of the particular incident giving rise to the violation (*Local 74* v. *N. L. R. B.*, 341 U. S. 707, 715), or indeed by the discontinuance of the total course of unfair conduct (which respondents do not claim) (*N. L. R. B.* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563; *N. L. R. B.* v. *Pool Mfg. Co.*, 339 U. S. 577).

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 151, *et seq.*), are as follows:

Findings and Policies

* * * * *

[Sec. 1]. Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

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DEFINITIONS

Sec. 2. When used in this Act—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign coun-

try and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

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UNFAIR LABOR PRACTICES

* * * * *

[SEC. 8]. (b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

* * * * *

[SEC. 8]. (c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * *

[SEC. 10]. (e) The Board shall have power to petition any circuit court of appeals of the United States * * *, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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